

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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UNITED STATES OF AMERICA,

NO. CR. 99-433 WBS

Plaintiff,

v.

ORDER RE: DEFENDANT'S
MOTION FOR RECONSIDERATION;
MOTION TO UNSEAL GRAND
JURY TRANSCRIPTS

JOHN THAT LUONG, et al.,

Defendants.

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Defendant John That Luong moves for reconsideration of this court's order of August 18, 2006, denying defendant's motion to dismiss all of the charges in the indictment against him for failure to properly allege the offenses charged. Defendant also moves to unseal grand jury transcripts pursuant to Federal Rule of Criminal Procedure 6(e).¹

I. Sufficiency of the Indictment

¹ Defendants Houng Ai Le, Thongsouk Theng Lattanhom, Minh Huynh, and Son Van Nguyen join in the motion for reconsideration. Defendant Son Van Nguyen also joins the motion to unseal grand jury transcripts.

1 An indictment must inform the defendant of "the nature
2 and cause of the accusation in order that he may meet it and
3 prepare for trial, and after judgment, be able to plead the
4 record and judgment in bar of a further prosecution for the same
5 offense." Wong Tai v. United States, 273 U.S. 77, 80-81 (1927).
6 Additionally, the indictment serves to "ensure that the defendant
7 is being prosecuted on the basis of facts presented to the grand
8 jury and to allow the court to determine the sufficiency of the
9 indictment." United States v. Lane, 765 F.2d 1376, 1380 (9th
10 Cir. 1985). To meet these ends, "[a]n indictment must set forth
11 each element of the crime that it charges." Almendarez-Torres v.
12 United States, 523 U.S. 224, 228 (1998) (citing Hamling v. United
13 States, 418 U.S. 87, 117 (1974)).

14 The court has examined the moving papers and heard oral
15 arguments now for the second time. The court will withdraw the
16 order of August 18, 2006. It would serve no useful purpose to
17 attempt to address every nuance of defendant's arguments in this
18 order. To do so would risk unnecessarily commenting on what
19 evidence may be admitted at trial and how the jury will be
20 instructed. The sole issue before the court in this motion is
21 whether the indictment is sufficient. The court concludes that
22 the indictment sufficiently states offenses against the United
23 States. The indictment clearly alleges and charges all elements
24 of conspiracy to commit robbery under the Hobbs Act, use of a
25 firearm during a crime of violence, and death caused by use of a
26 firearm during a crime of violence and aiding and abetting.

27 II. Grand Jury Transcripts

28 Defendant moves to unseal grand jury transcripts

1 relating to the testimony and instructions of the specific
2 objects of the alleged robberies underlying Counts 1, 4, 6, and 8
3 pursuant to Federal Rule of Criminal Procedure 6(e).
4 Specifically, defendant argues that grounds "exist to dismiss the
5 indictment because of a matter that occurred before the grand
6 jury." Fed. R. Crim. P. 6(e)(3)(E)(iii). Under Rule 6(e),
7 parties seeking disclosure "must show that the material they seek
8 is needed to avoid a possible injustice in another judicial
9 proceeding, that the need for disclosure is greater than the need
10 for continued secrecy, and that their request is structured to
11 cover only material so needed." Douglas Oil Co. v. Petrol Stops
12 Nw., 441 U.S. 211, 222 (1979).

13 The interests of continued grand jury secrecy are
14 reduced, but not eliminated, when the grand jury has ended its
15 activities. Id.; see also United States v. Plummer, 941 F.2d
16 799, 806 (9th Cir. 1991) ("The importance of secrecy in grand
17 jury proceedings extends to the effect on future grand juries,
18 not just the particular grand jury involved, which may have
19 completed its proceedings long before a defendant's request for
20 transcripts.") Disclosing grand jury transcripts is in the sound
21 discretion of the district court. United States v. Plummer, 941
22 F.2d at 806 ("The decision to release or not release grand jury
23 transcripts is reviewed for abuse of discretion.")

24 Defendant specifically requests those portions relating
25 to whether the grand jury's intent was to charge the defendant
26 with robbery of a business or robbery of individuals. Although
27 defendant's request is narrowly tailored, the court concludes
28 that the indictment is sufficiently clear to put defendant on

1 notice that the indictment alleges robbery of a business. The
2 indictment alleges that the defendant obstructed and affected
3 commerce "by armed robbery . . . by threatening physical violence
4 against another person, to wit: the owners and employees of Phnom
5 Pich Jewelry Store, a company which does business in foreign and
6 interstate commerce." (Oct. 1, 1999 Indictment 2.)

7 In United States v. Rodriguez, the court noted that
8 "the indictment specifically stated that the intended targets of
9 the robbery were 'narcotics traffickers'," and therefore found
10 "that an intended robbery of cocaine from narcotics traffickers
11 is the robbery of a business" 360 F.3d 949, 955-56 (9th
12 Cir. 2004.) As in Rodriguez, the victims of the crime alleged
13 here are not named or identified strictly as individuals, but
14 with regard to their relationship to a certain type of business.
15 Thus, the indictment sufficiently puts defendants on notice of
16 the fact that they are charged with conspiring to obstruct
17 commerce by armed robbery of a business.

18 The court sees no significant difference between the
19 robbery of narcotic traffickers, as in Rodriguez, and the robbery
20 of a jewelry store, as in this case, in their connection to
21 interstate commerce. "Robbery of an interstate business . . .
22 typically constitutes sufficient evidence to satisfy the Hobbs
23 Act's interstate commerce element." Rodriguez, 360 F.3d at 955.
24 The indictment alleges that the Phnom Pich Jewelry Store does
25 business in foreign and interstate commerce.

26 Defendant's argument that the indictment may
27 ambiguously allege robbery of individuals in contrast to a
28 business is without merit. There are additional requirements,

1 not alleged here, for a charge of robbery under the Hobbs Act
2 when it is directed at an individual. Id. Specifically, where
3 the robbery was directed at an individual, the government must
4 show that the defendant "(1) stole from a person 'directly and
5 customarily engaged in interstate commerce;' (2) created a
6 likelihood that the assets of an entity engaged in interstate
7 commerce would be depleted; or (3) victimized [many people] or
8 took a sum so large that there was 'some cumulative effect on
9 interstate commerce.'" United States v. Lynch, 282 F.3d 1049,
10 1055 (9th Cir. 2002).


11 The indictment is sufficiently clear. The court fails
12 to see how disclosure would avoid injustice in this judicial
13 proceeding. The residual interest of grand jury secrecy also
14 counsels against disclosure. Accordingly, the court will deny
15 defendant's motion to unseal grand jury transcripts.

16 IT IS THEREFORE ORDERED that this court's order of
17 August 18, 2006, is WITHDRAWN;

18 IT IS FURTHER ORDERED that defendant's motion to
19 dismiss all counts of the indictment be, and the same hereby is,
20 DENIED; and

21 IT IS FURTHER ORDERED that defendant's motion to unseal
22 grand jury transcripts be, and the same hereby is, DENIED.

23 DATED: March 12, 2007
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26 WILLIAM B. SHUBB
27 UNITED STATES DISTRICT JUDGE
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